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September 23, 2002

NEPA Task Force  
P.O. Box 221150  
Salt Lake City, Utah 84122

Dear NEPA Task Force,

Please accept the comments of the The Lands Council (TLC) regarding the proposal to make changes to the National Environmental Policy Act (NEPA). We note that without the existing NEPA regulations far more damage on public lands would have occurred, including loss of old growth, loss of threatened and endangered species, and damage to watershed. We support strengthening NEPA, not weakening it.

The TLC commented on hundreds of NEPA documents over the past 15 years and find that our involvement has improved the quality of Forest Service, EPA, and BLM projects. The courts have consistently upheld the claims of citizens groups such as The Lands Council, and the role of citizens to actively participate in the management of our federal lands.

The TLC is against any changes that would weaken NEPA and limit citizen involvement. Currently, due to lawless agencies, poorly informed courts, and administrative actions that attempt to bypass or ignore citizen involvement, NEPA is already crippled. We need a stronger NEPA and not a weaker one. This can be done in the following ways:

NEPA should clearly state the important roles that citizens have in the NEPA process as well as in the efforts to protect the environment. NEPA should allow citizens:

- To request information about any phase/procedure/task/data related to a proposal.
- To learn about and effectively participate in an open planning process.
- To learn what the internal and external experts have to say about planning needs of proposals.
- To help protect the physical and biological elements of the environment.
- To improve procedural and documentation standards where they are absent or poorly thought out.
- To question and receive a response to policy statements, conclusions, assumptions made in proposals.
- To file appeals and lawsuits when bad decisions are made.

Opposition to federal proposals and policies is, at times, acceptable and appropriate behavior. Citizens, or groups of citizens, that act to try to protect the environment should never be considered as a special interest group or as a "competing interest."

NEPA should clearly state that Federal agencies should avoid hindrances to effective public participation in the NEPA process.

Each federal agencies should formalize a plan to prevent hindrances to public participation. Below is a list of hindrances encountered within the NEPA process that need to be corrected.

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- Unfair appeal handling; not tied to site specific observations made during the NEPA process.
- Use of Decision Memos often improper, bypassing NEPA and the appeal process.
- Many unpublished "decisions" such as Watershed Analysis, or KV expenditures do not allow participation, but should be under public scrutiny or scientific peer review.
- Not allowing sufficient time to conduct quality field surveys related to the NEPA process.
- Have a bibliography of important works, especially local research articles, for use during the NEPA process.
- Post-implementation effects are not being studied for use in the NEPA process.
- NEPA process information does not identify the cumulative impacts to be avoided.
- Poor programmatic EIS approach bypasses site-specific concerns
- Forest Service claims comments supplied during the NEPA process as being "out of scope" at all levels.
- NEPA has no formal auditing plan for key activities and processes.
- NEPA does not provide for the discovery of qualifications or limitations of federal employees that have key roles in the NEPA process.
- NEPA does not provide that federal agencies make available all "internal" documentation, databases, methodology descriptions, etc. that relate to the NEPA process.
- NEPA does not provide that federal agencies should offer training to the public on the various complex aspects of scoping; meeting legal requirements, methods for evaluation of comments, etc.

NEPA should include statements that require federal agencies (employees at all levels) to thoroughly address items raised by the public.

NEPA should include a scale for the use of the word, "significance," since it is often used by federal agencies.

Decisionmakers often lump issues raised by the public, as well as their decisions, into two broad categories - significant and insignificant. Since NEPA discusses the need to consider a broad range of perspectives, it would seem that there should be further refinements to the idea of significance. Here is a list of a few considerations for this purpose concerning significance, in terms of: costs to the public; societal/cultural needs not already available; commercial interests; maintaining natural conditions and processes; quality of life; the living organisms and their habitats represented in the region of the project; the impacts of man; and time expenditures

As it relates to the Freedom of Information Act, require federal agencies to be proactive in their efforts to collect/maintain/share information for the NEPA process.

The NEPA planning process should not be used by agencies (Forest Service!) to ignore substantive considerations at all levels. The use of a programmatic environmental impact statement is not appropriate for some situations. For example, many cumulative impacts cannot be effectively addressed by simply relegating the assessment of cumulative impacts to the site specific level and then, at the site specific level, reject the consideration of cumulative impacts as "Out of Scope" simply because one can "tier" to an EIS that mentions some ideas about cumulative impacts. By producing two or more levels of environmental considerations, the Forest Service plays a shell game. Is the cumulative effects analysis under Shell #1 (forestwide EIS)? Is it under Shell #2 (environmental assessment for a site specific project)? Or, is it under Shell #3 (empty by design)?

In addition the revised NEPA document should:

- 1) Require a specific cumulative impact analysis, assessment, and evaluation section in each Environmental

Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), and Finding of No Significant Impact (FONSI). Currently lawless agencies either do not include cumulative impacts or say they do but provide no quantitative information. Require both quantification and qualification of all proposals for cumulative impacts. Spell out the cumulative impacts so they include all past, present, and future foreseeable actions, no matter what the action was or who did the action in the project and surrounding areas.

2) Strengthen the CE definition (Section 1508.4) to limit the size, impact, and other features of an action so that only truly CE type actions are covered and not heavily impacting activities like logging, roading, wetlands destruction, mining, oil/gas activities, grazing, urbanization, etc. Some actions are damaging no matter what the level including those mentioned above. We need to focus on truly CE actions like erecting small signs, putting fiber optic cables in existing road right-of-ways, etc.

3) Require that all reasonable alternatives be covered in EIS/EA as stated in Section 1502.14(a). Currently, agencies often offer few if any reasonable alternatives. As our National forests are in need of restoration, we often ask for a restoration alternative that does not involve commercial logging – but a narrow Forest Service interpretation of this requirement is often made – hence we need a clarification in NEPA.

4) U.S. Government deserve service and not customer fees. NEPA should be required that a hard copy of environmental document be given to a member of the public that request them. Putting environmental documents on computer disk is not good enough since it ensure that 50% of the public (who do not own computers) are either not able to obtain the information or do so with much difficulty. Change Section 1506.6(f) to reflect the changes enumerated in this comment. In addition, many programs either work poorly or not at all on certain computers. Agencies are essentially requiring each member of the public to invest \$1,000-2,000 in a computer so they can use the disk given to them. It costs a considerable sum to print out 500-1,000 pages documents (Grand Parkway DEIS) on an individual's home printer. A hard copy can be easily used and carried to work so citizens can read and develop comments on their lunch hours and other free times. Stop assuming everyone has a computer. Putting a copy of an environmental document at a few local libraries in a town, city, or area to share is not sufficient for full public availability.

5) Make the CEQ independent of the political stresses that currently occur. For instance, during the Clinton Administration, several logging projects were granted an emergency EIS exemption under NEPA (Section 1506.11) with no public input. In our area the Douglas Fir Beetle Project in North Idaho and northeast Washington was granted an emergency. Pressure was applied to staff so that an illegal waiver of the EIS requirements was granted. This allowed the logging of over 50 million board feet of public trees on thousands of acres of two National Forests with inadequate NEPA analysis, assessment, and evaluation. The Spokane media labeled the project a hoax since it actually logged healthy green trees, the courts finally found in our favor after half of the project had been logged.

6) By altering NEPA the Bush Administration will take away one of the most citizen friendly involvement laws in existence. There is very little opportunity for most citizens to get involved in public decision making because there are few laws at the local and state level in Washington which mandate citizen participation and involvement. NEPA allows a community to ask questions and hold officials accountable. Anything which reduces or lessens citizen participation under NEPA will weaken our democratic form of government. When a developer, bureaucrat, or politician gets too greedy or arrogant, the power of NEPA can slap them down and require them to tell the truth. In this way NEPA offers citizens the opportunity to force these negative forces "to do the right thing." Without NEPA citizens will only be able to tell their employees (public servants and elected officials) not to do something bad, instead of actively working to get something good accomplished.

7) Require that all CEQ rules that apply to EIS preparation, also apply to EA. Since EA's play the vital

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role of determining whether an EIS is required it seems logical that the same rules in preparing an EIS should apply to an EA. Otherwise agencies hide the impacts in an EA by not conducting the analysis.

8) Our experience is that delays are usually caused by the agencies that do not implement NEPA as required by law, court cases, CEQ regulations, and the agency's own NEPA regulations, not due to citizen input and participation

9) Require that agency NEPA implementing regulations mirror CEQ regulations and do not reinterpret what NEPA and CEQ require.

10) Restore Section 1502.22 so the requirement that agencies are responsible for developing important information, if it can be developed in a reasonable timeframe. This worst case scenario analysis was weakened many years ago and needs to be reinstated and strengthened.

11) Require that projects cannot be segmented, ever. We are very concerned that the use of Categorical exclusions will segment individual timber sales to ignore cumulative impacts

12) Do not exempt fire fighting and fuel reduction projects, defense projects, mining projects, oil/gas projects, and other projects from NEPA. We need a more inclusive use of NEPA and not a less inclusive use. Fire fighting and fuel reduction projects need to be planned carefully to ensure they do not harm the very environment they purport to protect. Bulldozing fire lanes, clear-cut logging, destruction/damage to streamside zones, are all products of fire fighting and fuel reduction projects.

By allowing participation NEPA allows citizens to shine the light of honesty and responsibility onto agencies and public officials. Since the public are the owners of their government and public lands the public has a right to an honest analysis, assessment, and evaluation of how these assets will be treated, environmentally, by proposals that often benefit private interests with subsidized public money.

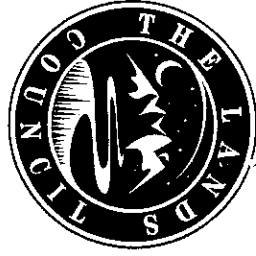
We urge the Bush Administration to upgrade NEPA so that the public can participate better in the management of federal lands. Thank you for accepting our comments.

Sincerely,



Mike Petersen

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THE LANDS COUNCIL

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